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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CURT STREET WILCOX,

Defendant and Appellant.

H045211

(Monterey County

Super. Ct. No. SS170876)

I. INTRODUCTION

Defendant Curt Street Wilcox appeals after a jury found him guilty of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),¹ assault with a stun gun (§ 244.5, subd. (b)), and misdemeanor willful harm or injury to a child (§ 273a, subd. (b)). The trial court sentenced defendant to four years.

On appeal, defendant contends there is insufficient evidence to support his conviction of assault with a deadly weapon. For reasons that we will explain, we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Prosecution Evidence*

In June or July 2014, Brooke Wilcox moved onto defendant's property in Royal Oaks with her husband Shaun and her two daughters, Jane Doe One and Jane Doe Two.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Defendant is Brooke's father-in-law. Brooke and Shaun had agreed to construct a living space inside of a shop building on defendant's property in exchange for being allowed to live there rent-free for five years.

Shortly after they moved in, Brooke and Shaun's relationship with defendant soured and in January 2017, defendant asked them to leave. On January 3, 2017, defendant posted an eviction notice on their door.

Brooke and Shaun moved out of defendant's property in April 2017, but they left some of their belongings there on the advice of their lawyer. On June 2, 2017, Brooke, Shaun, and their two daughters went back to the property to get the rest of their things. Jane Doe One was 10 years old; Jane Doe Two was 4 years old. Two of Shaun's cousins were also there.

Around 1:00 p.m., Brooke saw defendant walking around with a stun gun.² Brooke knew that the stun gun was on because its red light was activated. The stun gun was "the kind that you have to physically touch someone with to electrocute them," not the kind that shoots out probes.

Sometime between 1:30 and 2:00 p.m., defendant called the police to report that Brooke and Shaun were trespassing. When the police responded, defendant put the stun gun in the back of his trunk. Brooke told Monterey County Sheriff's Deputy Dennis Munoz that she felt uncomfortable because defendant was walking around with a stun gun, and the deputy said that he would talk to defendant about it.³ After about a half

² Although Brooke and Shaun referred to the object as a taser, Monterey County Sheriff's Deputy Dennis Munoz identified the item as a stun gun and the product's packaging stated that it was a "Knock Out Stun Gun With Disable Pin & Panic Alarm." The parties on appeal also refer to the item as a stun gun. We therefore use the term "stun gun" throughout this opinion.

³ Deputy Munoz testified that when he first responded to the property for a civil standby, he was unaware of the stun gun and he did not speak to Brooke.

hour, Deputy Munoz left. Defendant also left the property and was gone for an hour or so.

Shaun and his cousins moved Brooke and Shaun's remaining belongings out of the house. They took ceiling fans, a security system, light fixtures, a wooden countertop, some books, a ladder, and some tools. It was "two trailers worth" of stuff.

Around 7:20 p.m., Brooke and her daughters were sitting in her vehicle waiting for Shaun to finish up. Defendant approached and began talking to Jane Doe One. Brooke got out of the vehicle and told defendant that he could not talk to her daughters. When Brooke saw that defendant had the taser on, she started filming him on her phone and walking toward him. She thought recording defendant was the only way to protect her daughters. Defendant asked Brooke whether she was going to assault him. Brooke asked him how she was threatening him and defendant did not respond.

Brooke stopped filming defendant on her phone when defendant said, "I love you, Brooke, you're the mother of your [*sic*] grandkids." Brooke told defendant, "[T]hey are not your grandkids. You don't have grandkids anymore. We want nothing to do with you. Leave us alone. Just leave us alone." Defendant then took four steps toward Brooke with the stun gun on. Brooke could not back up because a trailer was right behind her. Brooke's daughters started to scream.

Brooke began filming again and yelled for Shaun. Brooke also grabbed an aluminum paint stick to protect herself. The stick was hollow and about four to five feet long. Defendant tried to antagonize Brooke by saying "louder" in response to her calls for Shaun. Defendant then ran at Brooke and attacked her, applying the stun gun to her face. Brooke screamed. It felt like she was being electrocuted.

Brooke had dropped her phone and the aluminum stick because defendant had come at her so quickly. She tried to fight back, protect herself, and keep defendant away from the kids. She continued to scream as loud as she could. Brooke pushed defendant away and fought him by punching and kicking him, but defendant was able to apply the

stun gun to Brooke approximately 12 times. Defendant used the stun gun on Brooke's face, chest, arms, legs, stomach, and back. He placed the stun gun to her right jaw area twice. At some point, Brooke fell to the ground from either being pushed over or tripping, and hit her head and hurt her knee.

When Brooke fell, defendant got on top of her and used the stun gun on her stomach. Brooke was "fighting for [her] life" because defendant held the stun gun to her stomach "for a good five to ten seconds" and she thought she "was going to die." It was an "unbelievable" amount of electricity going through her body. Brooke screamed uncontrollably and grabbed defendant's hand and pushed it away. Just as defendant was "going back in again to get [her]," Shaun tackled him. Jane Doe One had run to the shop building and told Shaun, "[H]e's attacking mom, he's attacking mom," prompting Shaun to run outside. When Shaun got outside, he saw Brooke wrestling with defendant on the ground. Defendant had the stun gun on Brooke's face.

Defendant tried to use the stun gun on Shaun and again on Brooke. He also tried to bite Shaun. Shaun punched defendant all over. Shaun's cousins arrived and together with Shaun tried to take the stun gun away from defendant, but defendant was holding it with a "death grip." After about 20 to 30 seconds, they were able to get the stun gun out of defendant's hand.

Defendant began crying for help and rolled about 20 yards over to his garage. He then grabbed his phone and said, "Thank you, Brooke, I've recorded the whole thing," and got into his car.

Some of Brooke's hair had gotten caught in the stun gun. She had a little bit of blood and red marks on the right side of her chest. There were also marks from the stun gun below Brooke's belly button and multiple marks on her back. Brooke could not walk and sat down on the ground, yelling at defendant because she was so angry. Shaun called 911. Brooke found out later that she had broken her foot.

Deputy Munoz responded to the 911 call. He observed that Brooke had “stun gun injuries” to her chest, upper groin stomach area, and back. Jane Doe One was crying and hyperventilated when the deputy asked her to describe the attack on Brooke. Deputy Munoz asked defendant whether he had stun-gunned Brooke, and defendant denied it. Deputy Munoz then asked why Brooke had “stun [gun] marks on her body,” and defendant shrugged his shoulders and looked down. The defendant had an injury to his head.

Defendant gave the stun gun’s packaging to Deputy Munoz. The stun gun was a “Knock Out Stun Gun With Disable Pin & Panic Alarm.” A section of the packaging detailed the stun gun’s “Stun Effects.” If used for “1.2 sec[onds], it will startle assailants, giving some pain, muscular contraction, & shock.” When used for “1-2 sec[onds], [it] causes spasms & a dazed mental state.” Use for “3-5 sec[onds], causes loss of balance, muscle control, mental confusion & disorientation; leaving the assailant disabled.” The packaging also stated that the stun gun “[w]ill not cause permanent damage” and that the stun gun’s current was .65 amps. The “[c]harge will have an effect anywhere on the body, but the maximum effect” is achieved by use of the stun gun on a person’s head, chest, or groin.

B. *Defense Evidence*

Defendant represented himself at trial and called one witness, Dave Clark. Clark testified that he picked defendant up from jail on June 3, 2017. When they arrived at defendant’s house, Clark saw that it was in disarray. He also observed that a child’s bike had been sawed in half.

Defendant did not testify.

C. *Charges, Convictions, and Sentence*

Defendant was charged with assault with a deadly weapon (§ 245, subd. (a)(1); count 1), assault with a stun gun or taser (§ 244.5, subd. (b); count 2), and misdemeanor willful harm or injury to a child (§ 273a, subd. (b); count 3).

A jury found defendant guilty as charged. The trial court sentenced defendant to the aggravated term of four years on count 1, the aggravated term of three years on count 2, which the court stayed pursuant to section 654, and a 180-day concurrent sentence on count 3.

III. DISCUSSION

Defendant contends that his conviction of assault with a deadly weapon must be reversed because there is insufficient evidence that the stun gun was a deadly weapon within the meaning of section 245, subdivision (a)(1). Defendant argues that “Brooke’s testimony reflects that [he] used the stun gun as it was designed, to ‘temporarily immobilize a person by the infliction of an electrical charge[]’ (Pen. Code, § 244.5, subd. (a)[])” and that “[n]othing in the record suggests this particular stun gun was capable of producing, and likely to produce, great bodily injury as it was used on Brooke.” The Attorney General asserts that there is sufficient evidence to uphold the conviction based on defendant’s manner of use of the stun gun on Brooke and Brooke’s injuries.

A. *Standard of Review*

“ ‘ “To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” ’ [Citations.] ‘ “ ‘If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.’ ” ’ [Citations.] The standard of review is the same when the prosecution relies mainly on circumstantial evidence. [Citation.]” (*People v. Valdez* (2004) 32 Cal.4th 73, 104 (*Valdez*).)

B. Analysis

Section 245, subdivision (a) prohibits “assault upon the person of another with a deadly weapon or instrument other than a firearm” or “by any means of force likely to produce great bodily injury.” Although the statute does not define the term “deadly weapon,” courts have construed it to mean “ ‘any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.’ [Citation.] Some few objects, such as dirks and blackjacks, have been held to be deadly weapons as a matter of law; the ordinary use for which they are designed establishes their character as such. [Citations.] Other objects, while not deadly per se, may be used, under certain circumstances, in a manner likely to produce death or great bodily injury.” (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029 (*Aguilar*).) A pillow, an automobile, a large rock, a razor blade, and a fingernail file have been found to be deadly weapons based on their manner of use. (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275-276 & fn. 3.)

Here, the prosecution did not argue below, nor does the Attorney General argue on appeal, that a stun gun is an inherently deadly weapon. Thus, our inquiry is limited to whether substantial evidence supports the jury’s finding that defendant used the stun gun as a deadly weapon. (See *In re B.M.* (2018) 6 Cal.5th 528, 533.)

“In determining whether an object not inherently deadly or dangerous is used as such, the trier of fact may consider the nature of the object, the manner in which it is used, and all other facts relevant to the issue. [Citations.]” (*Aguilar, supra*, 16 Cal.4th at p. 1029.) “[A] conviction for assault with a deadly weapon does not require proof of an injury or even physical contact. Nonetheless, ‘if injuries result, the extent of such injuries and their location are relevant facts for consideration’ in determining whether an object or instrument was used in a manner likely to produce death or great bodily injury.” (*In re Brandon T.* (2011) 191 Cal.App.4th 1491, 1497.) Great bodily injury is “ ‘significant or substantial injury.’ ” (*Ibid.*) “Permanent or protracted impairment, disfigurement, or loss

of function, however, is not required.” (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1087.)

Recently, in *In re B.M.*, the California Supreme Court reversed a Court of Appeal decision affirming a juvenile court’s finding that a minor’s use of a butter knife, which had a dull tip and a serrated edge, violated section 245, subdivision (a)(1). (*In re B.M.*, *supra*, 6 Cal.5th at p. 530.) The evidence showed that the minor made slicing motions with the knife on the victim’s blanketed legs using moderate pressure. (*Id.* at pp. 531, 536.) The victim was scared because she thought that the minor could have really hurt her, but she sustained no injuries. (*Id.* at p. 531.)

In its decision, the Supreme Court stressed that “the object alleged to be a deadly weapon must be used in a manner that is not only ‘capable of producing’ but also ‘*likely to produce* death or great bodily injury.’” (*In re B.M.*, *supra*, 6 Cal.5th at p. 533.) “The use of an object in a manner ‘likely to produce’ death or great bodily injury [citation] requires more than a mere possibility that serious injury could have resulted from the way the object was used.” (*Id.* at p. 534.) In addition, “conjecture as to how the object could have been used” is not permitted. (*Ibid.*) “Rather, the determination of whether an object is a deadly weapon under section 245[, subdivision](a)(1) must rest on evidence of how the defendant actually ‘used’ the object.” (*Ibid.*)

“Although it is inappropriate to consider how the object could have been used as opposed to how it was actually used, it is appropriate in the deadly weapon inquiry to consider what harm could have resulted from the way the object was actually used. Analysis of whether the defendant’s manner of using the object was likely to produce death or great bodily injury necessarily calls for an assessment of potential harm in light of the evidence. As noted, a mere possibility of serious injury is not enough. But the evidence may show that serious injury was likely, even if it did not come to pass.” (*In re B.M.*, *supra*, 6 Cal.5th at p. 535.) Moreover, “the extent of actual injury or lack of injury is also relevant.” (*Ibid.*) “[L]imited injury or lack of injury may suggest that the nature

of the object or the way it was used was not capable of producing or likely to produce death or serious harm.” (*Ibid.*)

Based on the record before us, we conclude there is sufficient evidence to support the jury’s determination that defendant’s use of the stun gun on Brooke constituted an assault with a deadly weapon in violation of section 245, subdivision (a)(1). Defendant used the stun gun on Brooke approximately 12 times, applying it directly to her skin. Brooke testified that defendant repeatedly applied the stun gun to her face and also used it on her chest, arms, legs, stomach, and back. It felt to Brooke as if she was being electrocuted. The last time, defendant applied the stun gun to Brooke’s stomach “for a good five to ten seconds,” leading her to think she “was going to die.” It was an “unbelievable” amount of electricity coursing through her body. Brooke had red marks from the stun gun on her chest, below her belly button, and on her back. In addition, some of her hair was caught in the gun’s prongs and she bled a little on the right side of her chest.⁴ Deputy Munoz observed that Brooke had “stun gun injuries” or “stun [gun] marks” on her chest, upper groin stomach area, and back. Photographs admitted into evidence showed stun gun marks on Brooke’s chest, back, stomach, and left leg, as well as the hair that was caught in the gun’s prongs.

The stun gun’s packaging indicated that the “maximum effect” would be achieved by application of the stun gun to a person’s head, chest, or groin area. Defendant used the stun gun on two of Brooke’s most vulnerable areas, her face and her chest, in addition to other areas of her body. The packaging also stated that if the stun gun is used for “3-5 sec[onds], [it] causes loss of balance, muscle control, mental confusion & disorientation; leaving the assailant disabled.” Brooke testified that defendant held the stun gun to her stomach for approximately five to ten seconds, which was up to double

⁴ Although Brooke testified that she broke her foot during the incident, that injury was not attributed to the stun gun.

the length of application time detailed on the packaging. This prolonged use occurred at the end of the attack, after defendant had repeatedly applied the stun gun to some of the most vulnerable areas on Brooke's body.

Based on our review of the entire record, we conclude there is evidence that is reasonable, credible, and of solid value from which a rational trier of fact could find that defendant's use of the stun gun on Brooke constituted an assault with a deadly weapon under section 245, subdivision (a)(1) because the stun gun was capable of and likely to cause significant or substantial bodily injury. (See *Valdez, supra*, 32 Cal.4th at p. 104; *In re B.M., supra*, 6 Cal.5th at p. 533.)

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

GREENWOOD, P.J.

DANNER, J.

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